

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CELLULAR COMMUNICATIONS)
EQUIPMENT, LLC)
) DOCKET NO. 6:14cv251
-vs-)
) Tyler, Texas
) 8:31 a.m.
APPLE INC., ET AL) September 14, 2016

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE K. NICOLE MITCHELL,
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:

MR. BRADLEY W. CALDWELL
MR. JOHN AUSTIN CURRY
CALDWELL CASSADY & CURRY
2101 Cedar Springs Rd., Suite 1000
Dallas, Texas 75201

MR. EDWARD R. NELSON III
NELSON BUMGARDNER PC
3131 West 7th Street, Suite 300
Fort Worth, Texas 76107

MR. J. WESLEY HILL
WARD, SMITH & HILL PLLC
1507 Bill Owens Parkway
Longview, Texas 75604

COURT REPORTER: MS. CHRISTINA L. BICKHAM, CRR, RMR
FEDERAL OFFICIAL COURT REPORTER
300 Willow, Ste. 221
Beaumont, Texas 77701

Proceedings taken by Machine Stenotype; transcript was
produced by a Computer.

1 FOR THE DEFENDANTS:

2

3 MR. DOUGLAS E. LUMISH
4 MR. JEFFREY G. HOMRIG
5 MS. LISA K. NGUYEN
6 MR. BRETT M. SANDFORD
7 LATHAM & WATKINS LLP
8 140 Scott Dr.
9 Menlo Park, California 94025-1008

7 MR. JOSEPH H. LEE
8 LATHAM & WATKINS LLP
9 650 Town Center Drive, 20th Floor
10 Costa Mesa, California 92626-1925

10 MR. ERIC H. FINDLAY
11 FINDLAY CRAFT PC
12 102 N. College Avenue, Suite 900
13 Tyler, Texas 75702

12

13

14

15

P R O C E E D I N G S

16

(Jury out.)

17

COURT SECURITY OFFICER: All rise.

18

19

THE COURT: Good morning, everyone. Please be
seated.

20

21

I understand there's some matters that we need to
take up before we begin this morning. What's first?

22

MR. MCMANIS: Good morning, Your Honor.

23

24

25

Just one issue for CCE. We passed up a slide to
you. We object to this slide in Apple's closing as
prejudicial and not supported by the facts in evidence.

1 There was no one who took CCE's proposed royalty
2 rate for the '820 patent and demonstrated that that would be
3 an appropriate royalty rate for all of the 155,000 worldwide
4 patents that have been declared to the standard. Apple's own
5 witnesses couldn't testify as to the number of those patents
6 they actually practiced.

7 And so we think multiplying those two numbers
8 together is -- is highly prejudicial, misleading to the jury,
9 and is not supported by any of the facts that have been
10 presented so far.

11 THE COURT: Response.

12 MR. LUMISH: Thank you, Your Honor.

13 It does come from facts in evidence. The 15-cent
14 rate comes from their expert. 155,000-plus worldwide
15 declared patents essential comes from Ms. Mewes. The notion
16 of royalty stacking and the problems that it creates comes
17 from both Ms. Mewes and Mr. Bakewell. The only thing
18 somebody didn't do is the basic, I think it's third grade
19 math to multiply the two things together, which is the only
20 thing you can --

21 THE COURT: Is there any evidence that each of the
22 155,000 patents should be licensed at a 15-cent royalty?

23 MR. LUMISH: No, but that's the point. That's the
24 point we're going to make, is if you apply that 15 cents,
25 they're going to say it's not very much money, it's just

1 15 cents per phone. If you apply that and just extrapolate
2 it out over all of the people who could say that, you end up
3 with a number that's stack rate.

4 THE COURT: Any final word, Mr. McManis?

5 MR. MCMANIS: Yes, Your Honor.

6 I think you hit the nail on the head. There's --
7 there's no evidence that these other patents -- even that the
8 patent owners would suggest that they are worth 15 cents per
9 unit. Defendants have argued that each patent must be taken
10 specifically, even within the standard. And we think they
11 should be held to the same standard that they argued for
12 throughout this case.

13 THE COURT: I'm going to exclude it.

14 What's next?

15 MR. MCMANIS: Nothing from CCE, Your Honor.

16 THE COURT: Anything from Apple?

17 Did you-all get Ms. Mehta's e-mail with regard to
18 the updated verdict form? We just removed one of the
19 qualifying sentences to make the verdict form consistent. Is
20 there any objection to that?

21 MR. MCMANIS: No objection, Your Honor.

22 THE COURT: Okay.

23 MR. LUMISH: None from Apple, Your Honor.

24 THE COURT: Thank you.

25 MR. LUMISH: The only other thing was we handed to

1 Ms. Mehta some testimony. We had suggested that, perhaps,
2 Your Honor would like to take that last bit of testimony for
3 the bench trial on paper, but just wanted to get guidance as
4 far as whether you wanted it played for the Court or just
5 have it handed up to you.

6 THE COURT: Handed up to me is fine.

7 Is there any objection?

8 MR. MCMANIS: No, Your Honor.

9 THE COURT: Thank you.

10 MR. LUMISH: I think that's all Apple had, Your
11 Honor.

12 THE COURT: All right. Well, we'll be in recess --
13 my plan is to charge the jury. That will take a little while
14 to read it to them. Take a short break so that you-all can
15 get set up, and then we'll go through both closings. And
16 then I'll do the final -- the part of the charge -- the
17 instructions for deliberations I'll save until you are done
18 with your closings, give it to them, and let them go
19 deliberate. All right?

20 MR. FINDLAY: One question, Your Honor, looking
21 forward. What is the Court's practice with respect to
22 discussions or contact with the jurors after? I assume
23 it's -- we are allowed? We're not allowed? They can
24 approach us? If you can enlighten us on that.

25 THE COURT: They can approach you.

1 MR. FINDLAY: Okay.

2 THE COURT: And I'll tell them that, that if they'd
3 like to talk to you, they can approach you.

4 MR. FINDLAY: Would -- would Your Honor consider
5 asking the jurors individually if they would mind being
6 contacted by the lawyers?

7 THE COURT: I -- I don't mind asking them that. I
8 can -- but I will ask them that when I go back to talk with
9 them afterwards, not on the record. I don't want to single
10 them out.

11 MR. FINDLAY: Okay.

12 THE COURT: Yeah.

13 MR. FINDLAY: Okay. Thank you, Your Honor.

14 THE COURT: All right. And I'll let you know.
15 I'll let all of you know.

16 MR. FINDLAY: Thank you.

17 THE COURT: All right. We'll be in recess until
18 9:00 a.m.

19 COURT SECURITY OFFICER: All rise.

20 (Recess.)

21 (Jury in.)

22 THE COURT: Good morning, Ladies and Gentlemen of
23 the Jury. We are beginning our last day of the trial. What
24 I'm going to do now is read to you the Court's charge. It is
25 rather lengthy, and I'm going to read it to you. You will

1 not need to take notes unless you want to. You will get a
2 copy of the Court's charge when you -- each of you will --
3 when you retire to the room to deliberate.

4 So I'm going to read the charge, then we're going
5 to take a short break to allow the parties to prepare the
6 room for closing argument. You will come back, you will hear
7 closing argument of the parties, and then you will retire to
8 the jury room to deliberate.

9 MR. MCMANIS: Your Honor, if I might take up one
10 housekeeping matter first.

11 THE COURT: Thank you, Mr. McManis, for keeping me
12 on task.

13 MR. MCMANIS: Good morning, Your Honor.

14 Plaintiff CCE offers its final list of admitted
15 trial exhibits.

16 THE COURT: Any objection?

17 MR. SANDFORD: No -- no objections, Your Honor.

18 THE COURT: Okay. Hand that up, please.

19 MR. SANDFORD: Good morning, Your Honor. Brett
20 Sandford for Defendant Apple.

21 Apple offers their final list of admitted exhibits.

22 THE COURT: Any objection?

23 MR. MCMANIS: No objection, Your Honor.

24 MR. SANDFORD: May I approach?

25 THE COURT: Yes. Thank you.

1 Now we will begin.

2 Members of the Jury, you have heard the evidence in
3 this case. I will now instruct you on the law that you must
4 apply. It is your duty to follow the law as I give it to
5 you.

6 On the other hand, you, the jury, are the judges of
7 the facts. Do not consider any statement that I have made
8 during the trial or make in these instructions as an
9 indication that I have any opinion about the facts of this
10 case.

11 After I instruct you on the law, the attorneys will
12 have an opportunity to make their closing arguments.
13 Statements and arguments of the attorneys are not evidence
14 and are not instructions on the law. They are intended only
15 to assist you in understanding the evidence and the parties'
16 contentions.

17 A verdict form has been prepared for you. You will
18 take the form to the jury room and when you've reached a
19 unanimous agreement as to your verdict, you will have your
20 foreperson fill in, date, and sign the form.

21 Answer each question on the verdict form from the
22 facts as you find them. Do not decide who you think should
23 win and then answer the questions accordingly. A corporation
24 and all other persons are equal before the law and must be
25 treated as equals in a court of justice. With respect to

1 each question asked, your answers and your verdict must be
2 unanimous.

3 In determining whether any fact has been proved in
4 this case, you may, unless otherwise instructed, consider the
5 testimony of all witnesses, regardless of who may have called
6 them, and all exhibits received in evidence, regardless of
7 who may have produced them.

8 You, the jurors, are the sole judges of the
9 credibility of all witnesses and the weight and effect of all
10 evidence. By the Court allowing testimony or other evidence
11 to be introduced over the objection of an attorney, the Court
12 did not indicate any opinion as to the weight or effect of
13 such evidence.

14 When the Court sustained an objection to a question
15 addressed to a witness, you must disregard the question
16 entirely and may draw no inference from the wording of it or
17 speculate as to what the witness would have testified to if
18 he or she had been permitted to answer the question.

19 At times during the trial, it was necessary for the
20 Court to talk with the lawyers here at the bench out of your
21 hearing or by calling a recess. We met because often during
22 a trial something comes up that does not involve the jury.

23 You should not speculate on what was discussed
24 during such times.

25 In deciding whether to accept or rely upon the

1 testimony of any witness, you may also consider the bias of
2 any witness -- any bias of the witness; the opportunity and
3 ability of the witness to see or hear or know the things
4 testified to; the witness's memory; the witness's manner
5 while testifying; whether other evidence contradicted or
6 corroborated the witness's testimony; the reasonableness of
7 the witness's testimony in light of all the evidence; and any
8 other factors that bear on believability.

9 Certain testimony in this case has been presented
10 to you through a deposition. A deposition is the sworn,
11 recorded answers to questions asked a witness in advance of
12 the trial. This deposition testimony is entitled to the same
13 consideration and is to be judged by you as to the
14 credibility and weight as if the witness had been present and
15 had testified from the witness stand in court. Neither party
16 is required to call every possible witness.

17 While you should consider only the evidence in this
18 case, you are permitted to draw such reasonable inferences
19 from the testimony and exhibits as you feel are justified in
20 the light of common experience.

21 In other words, you can make deductions and reach
22 conclusions that reason and common sense lead you to draw
23 from the facts that have been established by the testimony
24 and evidence in this case.

25 The testimony of a single witness may be sufficient

1 to prove any fact, even if a greater number of witnesses may
2 have testified to the contrary, if after considering all the
3 other evidence you believe that single witness.

4 There are two types of evidence that you may
5 consider in properly finding the truth as to the facts in the
6 case.

7 One is direct evidence, such as testimony of an
8 eyewitness.

9 The other is indirect or circumstantial evidence,
10 the proof of a chain of circumstances that indicates the
11 existence or nonexistence of certain other facts.

12 As a general rule, the law makes no distinction
13 between direct and circumstantial evidence but simply
14 requires that you find the facts from all the evidence, both
15 direct and circumstantial.

16 When knowledge of a technical subject matter may be
17 helpful to the jury, a person who has special training or
18 experience in that technical field (he or she is called an
19 expert witness) is permitted to state his or her opinion on
20 those technical matters.

21 However, you are not required to accept that
22 opinion. As with any other witness, it is up to you to
23 decide whether the witness's testimony is believable or not,
24 whether it is supported by the evidence, and whether to rely
25 upon it.

1 In deciding whether to accept or rely upon the
2 opinion of an expert witness, you may consider any bias of
3 the witness.

4 During this trial, the attorneys have presented
5 confidential information belonging to a person, party, or
6 witness as evidence. You are not to discuss or communicate
7 any confidential evidence presented during this trial to
8 anyone aside from the other jurors during deliberations,
9 either during the trial or after the trial.

10 I will first give you a summary of each side's
11 contentions in the case. I will then tell you what each side
12 must prove to win on these issues.

13 Plaintiff Cellular Communications Equipment LLC
14 (CCE) contends that Apple, Inc. makes, uses, sells, offers to
15 sell, or imports products into the United States -- the
16 accused devices (specifically Apple's iPhone 5, iPhone 5c,
17 iPhone 5s, iPhone 6, iPhone 6 Plus, iPad 3, iPad 4, iPad
18 Mini, iPad Mini with Retina Display, and iPad Air), that
19 fringe Claims 4, 10, 12, 20, and 24 of United States Patent
20 No. 8,055,820 (the 820 patent). These claims have been
21 referred to as the "asserted claims" and the patent has been
22 referred to as the "patent-in-suit."

23 CCE also contends that Apple is inducing the direct
24 infringement of the asserted claims. CCE is seeking damages
25 for the alleged infringement by Apple. CCE also contends

1 that Apple's infringement of the '820 patent has been
2 willful.

3 In response to CCE's contentions, Apple contends
4 that it does not infringe the asserted claims, either
5 directly or indirectly. Apple further contends that it does
6 not willfully infringe the asserted claims of the '820
7 patent. Apple further contends that the asserted claims are
8 invalid as rendered obvious by the prior art, or because the
9 patent applicant omitted other inventors from the patent.

10 Finally, Apple contends that CCE is not entitled to
11 any damages. In response to Apple's invalidity contentions,
12 CCE contends that Apple has not met its burden to show by
13 clear and convincing evidence that any of the asserted claims
14 of the patent-in-suit are invalid.

15 In any legal action, facts must be proved by a
16 required amount of evidence, known as the "burden of proof."
17 The burden of proof in this case is on CCE for some issues
18 and on Apple for other issues. There are two burdens of
19 proof in the case you'll be asked to consider: Preponderance
20 of the evidence and clear and convincing evidence.
21 CCE has the burden of proving infringement, damages and
22 willfulness by a preponderance of the evidence.

23 "Preponderance of the evidence" means the evidence
24 that persuades you that a claim is more likely true than not
25 true. If the proof establishes that all parts of CCE's

1 infringement claims are more likely true than not true, then
2 you should find for CCE as to that claim.

3 Apple has the burden of proving invalidity by clear
4 and convincing evidence. "Clear and convincing evidence"
5 means evidence that produces in your mind a firm belief or
6 conviction as to the matter at issue.

7 Although proof to an absolute certainty is not
8 required, the clear and convincing evidence standard requires
9 a greater degree of persuasion than is necessary for the
10 preponderance of the evidence standard.

11 If the proof establishes in your mind a firm belief
12 or conviction, then the clear and convincing evidence
13 standard has been met.

14 In determining whether any fact has been proved by
15 a preponderance of the evidence or by clear and convincing
16 evidence, you may, unless otherwise instructed, consider the
17 stipulations, the testimony of all witnesses, regardless of
18 who may have called them, and all exhibits received in
19 evidence, regardless of who may have produced them.

20 The claims of a patent are the numbered sentences
21 at the end of the patent. The claims describe the invention
22 made by the inventor and describe what the patent owner owns
23 and what the patent owner may prevent others from doing. The
24 figures and text in the rest of the patent provides a
25 description and/or examples of the invention and provide a

1 context for the claims, but it is the claims that define the
2 breadth of the patent's coverage.

3 In this case, Claims 4, 10, 12, 20, and 24 are at
4 issue. Claims may describe apparatuses, devices, or products
5 such as machines. Such claims are called "apparatus claims."
6 Claims may also describe processes or methods for making or
7 using a product. Those claims are called "method claims."

8 In this case, CCE has asserted apparatus and method
9 claims. Specifically, asserted Claims 12, 20, and 24 are
10 apparatus claims; and asserted Claims 4 and 10 are method
11 claims.

12 Claims are usually divided into parts or steps
13 called "limitations" or "elements." Each of these
14 limitations or elements is a requirement of the claim. For
15 example, a claim that covers the invention of a table may
16 recite the tabletop, four legs, and the glue that secures the
17 legs on the tabletop. The tabletop, legs, and glue are each
18 separate limitations of the claim, and these limitations can
19 also be referred to as the "elements" or "requirements" of
20 the claim.

21 When a thing (such as a product or process) meets
22 all of the requirements of the claim, the claim is said to
23 "cover" that thing, and that thing is said to "fall" within
24 the scope of that claim.

25 In other words, a claim covers when -- a claim

1 covers a product or process where each of the claim elements
2 or limitations is present in that product or process.

3 Conversely, if a product, process, or system meets
4 only some, but not all, of the claim elements or limitations,
5 then that product or process is not covered by the claim.

6 In deciding whether or not the accused products and
7 methods infringe the asserted claim and whether or not the
8 claim is invalid, the first step is to understand the meaning
9 of the words used in the patent claims.

10 It's my job as the Judge to determine what the
11 patent claims mean and to instruct you about that meaning.

12 You must accept the meanings I give you and use
13 those meanings when you decide whether or not the patent
14 claims are infringed, and whether or not they are invalid. I
15 have interpreted the meaning of some of the language in the
16 patent claims involved in this case.

17 My interpretation of those claims appears in your
18 notebook. The claim language I have not interpreted for you
19 in your notebook is to be given its ordinary and accustomed
20 meaning as understood by one of ordinary skill in the art.
21 The case involves two types of patent claims: Independent
22 claims and dependent claims.

23 An "independent claim" sets forth all of the
24 requirements that must be met in order to be covered by that
25 claim. Thus, it is not necessary to look at any other claim

1 to determine what an independent claim covers. In this case,
2 for example, Claims 12 and 24 of the '820 patent are each
3 independent claims.

4 The rest of the claims being asserted, 4, 10, and
5 20, in this case are "dependent claims." A dependent claim
6 refers to another claim and includes all of the requirements
7 or parts of the claims to which it refers. In this way the
8 claim "depends" on another claim. The dependent claim then
9 adds its own, additional requirements.

10 To determine what a dependent claim covers, it is
11 necessary to look at both the dependent claim and any other
12 claim to which it refers. A product or method that meets all
13 of the requirements of both the dependent claim and the
14 claims to which it refers is covered by that dependent claim.

15 The beginning portion, or preamble, to some of the
16 asserted claims uses the word "comprising." "Comprising" and
17 "comprises" mean "including but not limited to" or
18 "containing but not limited to."

19 Thus, if you decide that an accused product
20 includes all the requirements in that claim, the claim is
21 infringed. This is true even if the accused instrumentality
22 includes components in addition to those requirements.

23 For example, a claim to a table comprising a
24 tabletop, legs, and glue would be infringed by a table that
25 includes a tabletop, legs, and glue, even if the table also

1 includes wheels on the table's legs.

2 Claim 12 of the '820 patent uses the phrase "the
3 designating unit." The "designating unit" is a special type
4 of claim element in patent law known as a
5 "means-plus-function" element.

6 A means-plus-function claim element covers a
7 structure or a set of structures that performs the recited
8 function and that is either identical or "equivalent" to at
9 least one of the structures described in the patent
10 specification for performing that function. The issue of
11 whether two structures are identical or equivalent is for you
12 to decide.

13 I have identified the structures described in the
14 patent that perform the function identified in the
15 means-plus-function element of Claim 12. They are in your
16 notebook. You should apply my definition of the function and
17 the structures described in the patent for performing it just
18 as you would apply my definition of any other claim term.

19 Several times in my instructions, I refer to a
20 person of ordinary skill -- skill in the field of the
21 invention. In this case, a person of ordinary skill in the
22 art of the '820 patent would be a person with a bachelor's
23 degree in electrical or computer engineering or in computer
24 science, and two years of direct technical experience in the
25 design or implementation of communication networks, or

1 equivalent experience and/or education.

2 A person or business entity infringes a patent if
3 that person or business entity makes, uses, sells, or offers
4 to sell within the United States or imports into the United
5 States what is covered by a patent claim without the patent
6 owner's permission.

7 In reaching your decision on infringement, keep in
8 mind that only the claims of a patent can be infringed. To
9 determine if there is infringement, you must compare the
10 asserted patent claims (using the definitions for certain
11 claim terms that I have given you), to the accused products
12 and determine whether or not there is infringement.

13 You should not compare the accused products or
14 methods with any specific example set out in the patent,
15 because it is the language of the claims that defines the
16 invention covered by the patent.

17 You must reach your decision as to each asserted --
18 assertion of infringement based on my instructions about the
19 meaning and scope of the claims, the legal requirements for
20 infringement, and the evidence presented to you by all of the
21 parties.

22 The issue of infringement is assessed on a
23 claim-by-claim basis. Therefore, there may be infringement
24 as to one claim but no infringement as to another claim in
25 the patent.

1 In this case, there are two possible ways that a
2 claim may be infringed. I will explain the requirements for
3 each of these two types of infringement to you. The two
4 types of infringement are called "direct infringement" and
5 "indirect infringement." Indirect infringement can occur in
6 the form of active inducement. I will discuss active
7 inducement more fully in a moment.

8 In order to prove infringement for any particular
9 claim, CCE must prove that the requirements for either of
10 these types of infringement are met by a preponderance of the
11 evidence.

12 Direct infringement occurs when the party accused
13 of infringement itself makes, uses, or offers to sell, sells
14 in the United States or imports into the United States what
15 is covered by one or more claims of a patent without the
16 patent owner's permission.

17 To determine direct infringement for each asserted
18 patent claim, you must compare Apple's accused products with
19 each and every one of the requirements of that claim, using
20 my instructions as to the meaning of the patent claims. A
21 person may directly infringe a patent even though in good
22 faith it believes what it is doing is not an infringement of
23 any patent and even if the person did not know of the patent.

24 Direct infringement does not require proof that the
25 person copied a product or the patent.

1 Asserted Claims 12, 20, and 24 are apparatus
2 claims. If the accused product does not contain one or more
3 of the limitations recited in a claim, then the product does
4 not directly infringe that claim.

5 If you find that the accused product includes each
6 element or limitation of the claim, then that product
7 infringes the claim even if such product contains additional
8 elements that are not recited in the claim.

9 Asserted Claims 4 and 10 cover methods. To
10 determine infringement of a method claim, you must determine
11 whether the accused product performs each of the steps
12 recited by the method claim.

13 Where more than one actor is involved in practicing
14 the steps of a method claim, direct infringement can also be
15 found when an alleged -- when an alleged infringer controls
16 each of the steps and/or conditions participation in an
17 activity or receipt of a benefit upon performance of a step
18 or steps of a patented method and establishes the manner or
19 timing of that performance.

20 In deciding whether the actions of others (such as
21 the end users of Apple's products) are attributable to Apple,
22 you should consider the totality of the circumstances,
23 including whether Apple controls the method or manner in
24 which the method steps are carried out, or whether Apple
25 conditions the receipt of any benefit on the end user's

1 performance of the method steps.

2 Offering a product, system, or service does not
3 itself infringe a method claim. In order for a method claim
4 to be directly infringed, CCE must prove that each step of
5 the method is actually performed. The fact that a product or
6 service is capable of an infringing use is insufficient to
7 show infringement of a method claim.

8 Infringement requires performance of each step of
9 the claim. If a recited step is not performed, then the
10 claim is not infringed.

11 As I have previously explained, Claim 12 of the
12 '820 patent includes a claim element that has been defined as
13 a means-plus-function element or requirement. In your
14 notebook, I have instructed you about the meaning of this
15 claim element, explaining, first, the function that the
16 means-plus-function claim element performs and second, the
17 structure or set of structures disclosed in the patent
18 specification that corresponds to the means-plus-function
19 element.

20 To establish direct infringement of a
21 means-plus-function requirement of a claim, CCE must prove
22 two things: That the accused device employs a structure or
23 set of structures identical or equivalent to the structure
24 described in the patent; and that the relevant structure or
25 set of structures in the accused device performs the

1 identical function specified in the claim.

2 Where the structure in the accused device and the
3 structure disclosed in the patent specification are not
4 identical, CCE has the burden of proving that it is more
5 probable than not that the relevant structure in the accused
6 device is equivalent to the disclosed structure in the
7 patent, as I have defined it for you.

8 Two structures are equivalent if a person of
9 ordinary skill in the art would consider the differences
10 between them to be insubstantial at the time the patent was
11 issued.

12 One way to determine this is to look at whether or
13 not the accused structure performs the identical function in
14 substantially the same way to achieve substantially the same
15 result.

16 Another way is to consider whether people of
17 ordinary skill in the art would have known that the structure
18 of the accused product and the structure in the patent were
19 interchangeable at the time the patent issued.

20 If the product does not perform the specific
21 function recited in the means-plus-function claim element,
22 the element is not met, and the product does not literally
23 infringe the claim.

24 In addition, if the accused product's structures
25 perform the function recited in the claim element but those

1 structures of the accused product are neither identical nor
2 "equivalent" to the structures I identified for you in the
3 jury notebook, then the product does not literally infringe
4 the claim.

5 CCE also alleges that Apple is liable for
6 infringement by actively inducing others to directly infringe
7 the asserted claims. As with direct infringement, you must
8 determine whether there has been active inducement on a
9 claim-by-claim basis.

10 To show active induce -- to show induced
11 infringement, CCE must prove by a preponderance of the
12 evidence that customers or end users of Apple have directly
13 infringed the asserted patent claims and that Apple had
14 actively, and knowingly aided and abetted that direct
15 infringement. Apple is liable for active inducement of a
16 claim only if:

17 Apple took action during the time the patent is in
18 force which encourages acts by someone else;
19 The encouraged acts constitute direct infringement of that
20 claim;

21 Apple was -- (a) was aware of the patent and knew
22 that the encouraged acts constitute infringement of the
23 patent; or (b) was willfully blind to the infringement of the
24 patent.

25 Willful blindness requires that Apple subjectively

1 believed that there was a high probability that the
2 encouraged acts constituted infringement of the patent and
3 Apple took deliberate actions to avoid learning of the
4 infringement;

5 Apple had the specific intent to encourage
6 infringement by someone else; and

7 The encouraged acts are actually carried out by
8 someone else.

9 In order to prove active inducement, CCE must prove
10 that each of the above requirements is met by a preponderance
11 of the evidence, that it is more likely true than not that
12 each of the above requirements has been met.

13 In considering whether Apple has induced
14 infringement by others, you may consider all the
15 circumstances, including whether or not Apple knew of the
16 patent or was willfully blind to the patent when designing
17 and manufacturing its products and whether or not it removed
18 or diminished the alleged -- allegedly infringing features.
19 Apple cannot be liable for inducing infringement if it
20 reasonably believed that its actions or any -- that its
21 actions or any alleged direct infringer's actions did not
22 infringe the asserted claims.

23 Evidence of active steps taken to encourage direct
24 infringement, such as advertising an infringing use or
25 instructing how to engage in an infringing use, may be

1 considered in light of all the circumstances in determining
2 whether Apple had specific intent to cause others to
3 infringe.

4 In order to establish active inducement of
5 infringement, it is not sufficient that Apple was aware of
6 the acts that allegedly constitute the direct infringement;
7 rather, you must find that Apple specifically intended to
8 cause the acts that constitute the direct infringement and
9 must have known or was willfully blind to the action -- that
10 the action would cause the direct infringement.

11 If you do not find that the accused infringer meets
12 these specific intent requirements by a preponderance of the
13 evidence, then you must find that the accused infringer has
14 not actively induced the alleged infringement.

15 In this case, CCE contends that Apple willfully
16 infringed the '820 patent. To prove willful infringement,
17 CCE must first prove by a preponderance of the evidence that
18 Apple infringed a valid claim of the '820 patent. The
19 requirements for proving such infringement were discussed in
20 my prior instructions.

21 If you decide that Apple has infringed one or more
22 of the asserted claims, you must next address the additional
23 issue of whether or not that infringement was willful.

24 To prove willful infringement, CCE must prove by a
25 preponderance of the evidence that Apple had knowledge of the

1 '820 patent and that its conduct was willful, wanton,
2 malicious, bad faith, deliberate, consciously wrongful, or
3 flagrant.

4 You must base your verdict on the knowledge and
5 actions of Apple at the time the infringement occurred.
6 Infringement alone is not enough to prove willfulness and
7 mere knowledge of the '820 patent at the time of infringement
8 is not enough to prove willfulness.

9 You should consider all of the circumstances
10 including the motive or intent of Apple in developing and/or
11 selling the accused products. If you decide that any
12 infringement was willful, that decision should not affect any
13 damage award you give for infringement.

14 I will now instruct you on the specific rules you
15 must follow to determine whether Apple has proven that the
16 asserted claims of the '820 patent are invalid.

17 Patent invalidity is a defense to patent
18 infringement. Apple has challenged the validity of the
19 asserted patent claims. For a patent to be valid, the
20 invention claimed in the patent must be new, useful, and not
21 obvious.

22 A patent cannot take away from people their right
23 to use what was known or what would have been obvious when
24 the invention was made based on the prior art. In addition,
25 the patent must comply with certain statutory requirements

1 for patentability. Apple has challenged the validity of the
2 claims of the '820 patent on a number of grounds.

3 Apple must prove that a patent claim is invalid by
4 clear and convincing evidence. An issued patent is accorded
5 a presumption of validity based on the presumption that the
6 United States Patent and Trademark Office acted correctly in
7 issuing a patent.

8 Even though the Patent Office examiner has allowed
9 the claims of a patent, you have the ultimate responsibility
10 for deciding whether the claims of the patent are valid.

11 In deciding the issue of invalidity based on a
12 prior art reference or other information, you may take into
13 account whether the prior art or other information was, or
14 was not, previously considered by the Patent Office when it
15 examined the '820 patent but only if Apple showed that the
16 art or other information not considered by the Patent Office
17 was more relevant than the art or other information that was
18 considered by the Patent Office. You may decide how much
19 weight to assign to this fact based on the totality of the
20 evidence and circumstances.

21 I will now explain to you Apple's grounds for
22 invalidity in detail. In making your determination as to
23 invalidity, you should consider each claim separately.
24 In this case, Apple contends that the asserted claims of the
25 '820 patent are invalid as obvious.

1 A patent claim is invalid if the claimed invention
2 would have been obvious to a person of ordinary skill in the
3 field of the invention at the time the application was filed,
4 even if all of the requirements of the claim cannot be found
5 in a single prior art reference.

6 Even though an invention may not have been
7 identically disclosed or described before it was made by an
8 inventor, in order to be patentable, the invention must also
9 not have been obvious to a person of ordinary skill in the
10 field of the technology of the patent at the time the
11 invention was made.

12 Apple may establish that a patent claim is invalid
13 by showing, by clear and convincing evidence, that the
14 claimed invention would have been obvious to a person having
15 ordinary skill in the art at the time the invention was made
16 in the field of communication networks.

17 In determining whether a claimed invention is
18 obvious, you must consider the level of ordinary skill in the
19 field of the invention that someone would have had at the
20 time the invention was made, the scope and content of the
21 prior art, and any differences between the prior art and the
22 claimed invention, along with any objective evidence or
23 secondary considerations that shed light on the obviousness
24 or not of the claimed invention.

25 Keep in mind that the existence of each and every

1 element of the claimed invention in the prior art does not
2 necessarily prove obviousness. Most, if not all, inventions
3 rely on building blocks of prior art.

4 In considering whether a claimed invention is
5 obvious, you may, but are not required to find obvious if you
6 find that at the time of the claimed invention there was a
7 reason that would have prompted a person having ordinary
8 skill in the field of cellular communication networks to
9 combine the known elements in a way the claimed invention
10 does, taking into account such factors as:

11 Whether the claimed invention was merely the
12 predictable result of using prior art elements according to
13 their known function(s);

14 Whether the claimed invention provides an obvious
15 solution to a known problem in a relevant field;

16 Whether the prior art teaches or suggests the
17 desirability of combining elements claimed in the invention;
18 Whether the prior art teaches away from combining elements in
19 the claimed invention;

20 Whether it would have been obvious to try the
21 combinations of elements, such as when there is a design need
22 or market pressure to solve a problem and there are a finite
23 number of identified, predictable solutions; and

24 Whether the change resulted from more design
25 incentives or other market forces.

1 To find it rendered the invention obvious, you must
2 find that the prior art provided a reasonable expectation of
3 success. Obvious to try is not sufficient in unpredictable
4 technologies.

5 In determining whether the claimed invention was
6 obvious, consider each claim separately.

7 In determining whether a person of ordinary skill
8 would combine the prior art references in the combinations
9 that Apple has suggested, it is important to avoid hindsight
10 bias.

11 Whether a patent claim is invalid as obvious must
12 be determined by considering whether a person of ordinary
13 skill in the art would have been motivated to combine the
14 references at the time of the priority date of the invention.

15 In making these assessments, you should take into
16 account any objective evidence (sometimes called "secondary
17 considerations") that may shed light on the obviousness or
18 not of the claimed invention, such as:

19 Whether the invention was commercially successful
20 as a result of the merits of the claimed invention (rather
21 than the result of design needs or market-pressure
22 advertising or similar activities);

23 Whether the invention satisfied a long-felt need;

24 Whether others had tried and failed to make the
25 invention;

1 Whether others invented the invention at roughly
2 the same time;

3 Whether others copied the invention;

4 Whether there were changes or related technologies
5 or market needs contemporaneous with the invention;

6 Whether the invention achieved unexpected results;

7 Whether others in the field praised the invention;

8 Whether persons having ordinary skill in the art of
9 the invention expressed surprise or disbelief regarding the
10 invention;

11 Whether others sought or obtained rights to the
12 patent from the patent holder; and

13 Whether the inventor proceeded contrary to accepted
14 wisdom in the field.

15 In this case, Apple contends that the '820 patent
16 is invalid because of improper inventorship. A patent is
17 invalid if it fails to meet the requirements that all of the
18 actual inventors, and only the actual inventors, be named as
19 inventors in the patent. This is known as the "inventorship"
20 requirement.

21 To be an inventor, one must make a significant
22 contribution to the conception of at least one or more of the
23 claims of the patent even if that claim has not been alleged
24 to be infringed.

25 Whether the contribution is significant is measured

1 against the scope of the full invention.

2 The test for conception is whether the alleged
3 inventor had an idea that was definite and permanent enough
4 that one skilled in the art could understand the invention.

5 In other words, conception exists when the idea is
6 so clearly defined in the alleged inventor's mind that only
7 ordinary skill would be necessary to reduce the invention to
8 practice, without extensive research or experimentation.

9 If someone only explains to the actual inventors
10 well-known concepts or the current state-of-the-art, he or
11 she is not an inventor.

12 Merely helping with experimentation by carrying out
13 the inventor's instructions also does not make someone an
14 inventor.

15 If a person does not contribute to the conception
16 of the invention but merely assists with implementing the
17 invention or reducing it to practice, that person does not
18 qualify as an inventor for the patent.

19 What is required is some significant contribution
20 to the invention claimed.

21 A joint invention is simply the product of a
22 collaboration between two or more persons working together to
23 solve the problem addressed. Persons may be joint or
24 co-inventors even if they do not alone conceive of the entire
25 invention, even if they do not make the same type or amount

1 of contribution, and even if they do not contribute to the
2 subject matter of each claim of the patent.

3 Persons may be joint or co-inventors even though
4 they do not physically work together, but they must have some
5 open line of communication during or at approximately the
6 time of their inventive effort.

7 Oral testimony regarding inventorship, whether from
8 the inventor named in the patent or from any person claiming
9 to be an inventor of the patent, requires corroboration,
10 which can take many forms, including, for example,
11 contemporaneous documents, circumstantial evidence about the
12 inventive process, and oral testimony of someone other than
13 the alleged inventor.

14 After a patent is examined and allowed by the
15 Patent Office, it is presumed that the inventors have been
16 correctly named on the patent. To prevail on its
17 inventorship defense, Apple must prove by clear and
18 convincing evidence that one or more natural persons, other
19 than Benoist Sebire, made a significant contribution to the
20 conception of the invention that led to one or more of the
21 claims of the '820 patent.

22 Oral testimony alone is insufficient to prove
23 Apple's inventorship defense by clear and convincing
24 evidence. Instead, corroboration of such oral testimony is
25 required. A higher degree of corroboration is required where

1 the oral testimony is provided by the alleged inventor
2 himself or herself, or if the oral testimony is provided by
3 an interested party.

4 Documentary or physical evidence that is made
5 contemporaneously with the alleged inventive conception
6 provides the most reliable corroboration for the oral
7 testimony on these issues, but corroborating evidence may
8 only consist of testimony of a witness, other than an alleged
9 inventor interested party.

10 If you find that Apple has not corroborated the
11 oral testimony with other evidence, you are not permitted to
12 find for Apple on its inventorship defense.

13 If you find that Apple has infringed any valid
14 claim of the '820 patent, then you must consider what amount
15 of damages to award CCE.

16 I will now instruct you on the measure of damages.

17 You must determine the amount of money damages to
18 which CCE is entitled only if you find that Apple has fringed
19 at least one valid claim of the '820 patent.

20 By instructing you on damages, I do not suggest
21 that one or the other party should prevail. These
22 instructions are provided to guide you on the calculation of
23 damages in the event you find the asserted claims of the '820
24 patent are valid and infringed.

25 If you have found infringement, then the damages

1 must be adequate to compensate CCE for Apple's infringement,
2 and it may not be less than a "reasonable royalty."

3 At the same time, your damages determination must
4 not include additional sums to punish Apple or to set an
5 example. You may award compensatory damages only for the
6 loss that CCE proved was more likely than not caused by
7 Apple's infringement.

8 CCE has the burden to establish the amount of its
9 damages by a preponderance of the evidence. CCE must prove
10 the amount of damages with reasonable certainty by a
11 preponderance of the evidence but need not prove the amount
12 of damages with mathematical precision. CCE is not entitled
13 to damages that are remote or speculative. You should award
14 only the amount of damages that CCE establishes by a
15 preponderance of the evidence.

16 If you find that any asserted claim of the '820
17 patent is both valid and infringed, then CCE is entitled to
18 damages adequate to compensate for the infringement but not
19 less than a reasonable royalty for any use made of the
20 invention.

21 A royalty is the money a licensee pays to a patent
22 owner to make, use, or sell the patented invention. A
23 reasonable royalty is the amount of money a willing patent
24 owner and a willing prospective licensee would have agreed
25 upon at or just before the infringement began. The parties

1 agree that the earliest date of the hypothetical negotiation
2 between Apple and CCE would have been in 2012.

3 A reasonable royalty is the royalty that would have
4 resulted from an arm's-length negotiation between a willing
5 licensor and a willing licensee. Unlike a real-world
6 negotiation, in a hypothetical negotiation all parties are
7 presumed to know that the patent is infringed and valid.
8 The reasonable royalty you determine must be a royalty that
9 would have resulted from the hypothetical negotiation and not
10 simply a royalty either party would have preferred.

11 A reasonable royalty can take the form of a running
12 royalty or a fully paid-up, lump-sum royalty. A running
13 royalty is a fee that is paid for the right to use the patent
14 that is paid for each unit of the infringing product sold.

15 In other words, the licensee pays based on the
16 volume of licensed products it sells. By contract, a fully
17 paid-up, lump-sum royalty is paid by the accused infringer at
18 the time of the hypothetical negotiation and covers all
19 future infringement.

20 As part of your damages determination, you may
21 consider whether the parties to the hypothetical negotiation
22 would have agreed to a running royalty or a lump-sum royalty.

23 This determination must be made based on the
24 evidence presented at trial.

25 In deciding what is a reasonable royalty that would

1 have resulted from the hypothetical negotiation, you may
2 consider the factors that the patent owner and the alleged
3 infringer would consider in determining the reasonable
4 royalty at the hypothetical negotiation.

5 A reasonable royalty award must be based on the
6 incremental value attributable to the claimed invention, and
7 no more. In determining a reasonable royalty, you should
8 consider all the facts known and available to the parties at
9 the time of the infringement. You may also consider facts
10 arising after the date of the hypothetical negotiation, to
11 the extent they are of assistance in determining the amount
12 of a reasonable royalty.

13 Some of the kinds of factors that you should
14 consider in making your determination are:
15 The royalties received by the patentee for licensing of the
16 patents-in-suit, proving or tending to prove an established
17 royalty;

18 Royalties paid for other patents comparable to the
19 asserted patents;

20 The nature and scope of the license, as exclusive
21 or nonexclusive; or as restricted or nonrestricted in terms
22 of territory; or with respect to the parties to whom the
23 product may be sold;

24 Whether or not the licensor had an established
25 policy and marketing program to maintain its patent

1 exclusivity by not licensing others to use the inventions or
2 by granting licenses under special conditions designed to
3 preserve that exclusivity;

4 The commercial relationship between the licensor
5 and licensee, such as whether they are competitors in the
6 same territory and the same line of business, or whether they
7 are inventor and promoter;

8 Whether being able to use the patented invention
9 helps in making sales of other products or services;
10 The duration of the patent and the term of the license;

11 The profitability of the patented invention and
12 whether or not it is commercially successful or popular;

13 The utility and advantages of the patented
14 invention over the old modes or devices, if any, that had
15 been used for achieving similar results.

16 The nature of the patented invention, the character
17 of the commercial embodiment of it as owned and produced by
18 the licensor, and the benefits to those who have used the
19 invention;

20 The extent of the licensee's use of the patented
21 invention and any evidence probative of value of that use;
22 The portion of the profit or the selling price that may be
23 customary in the particular business or in comparable
24 businesses to allow for the use of the invention or analogous
25 inventions;

1 The portion of the profits that is due to the
2 patented invention as compared to the portion of the profit
3 due to other factors, such as unpatented elements or
4 unpatented manufacturing processes or features or
5 improvements developed by the licensee;

6 Expert opinions as to what would be a reasonable
7 royalty;

8 The amount that a licensor and a licensee would
9 have agreed upon if both sides had been reasonably and
10 voluntarily trying to reach an agreement; that is, the amount
11 which an accused infringer would have been willing to pay as
12 a royalty and yet be able to make a reasonable profit and
13 which amount would have been acceptable to a patent owner if
14 it would have been willing to create a license.

15 No one factor is dispositive and you can and should
16 consider any evidence that has been presented to you in this
17 case on each of the factors. The framework which you should
18 use in determining a reasonable royalty is a hypothetical
19 negotiation between normally prudent businesspeople.

20 You have heard evidence in this case that the
21 asserted patent is a standard essential patent; that is, the
22 LTE standard cannot be practiced without the infringing
23 patent.

24 If you agree that the patent is essential to the
25 LTE standard, you must ensure that your damages award

1 reflects only the value of the patented invention and not the
2 additional value that resulted from the patent's inclusion in
3 the LTE standard.

4 In other words, you may not consider the success of
5 the LTE standard itself in determining a reasonable royalty
6 for the patent-in-suit.

7 In considering a reasonable royalty, you may also
8 consider whether or not Apple had a commercially acceptable
9 non-infringing alternative to taking a license from the
10 patent holder and whether that would have affected the
11 reasonable royalty the parties would have agreed upon.

12 When determining a royalty, you should consider
13 whether the patent is essential to the standard and required
14 to be licensed on fair, reasonable, and non-discriminatory
15 terms (also called FRAND terms). The parties dispute whether
16 or not the '820 patent is essential to the standard.

17 By referring to standard essential patents, the
18 Court is not instructing you that the '820 patent is actually
19 essential to any standard. Again, it is up to you, the jury,
20 to decide whether or not the patent is standard essential.

21 When dealing with standard essential patents, there
22 are two special apportionment issues that arise.

23 First, the patented feature must be apportioned
24 from all of the unpatented features reflected in the
25 standard.

1 Second, the patentee's royalty must be premised on
2 the value of the patented feature, not any value added by the
3 standard's adoption of the patented technology.

4 These steps are necessary to ensure that the
5 royalty award is based upon the incremental value that the
6 patented invention adds to the product, not any value added
7 by the standardization of that technology.

8 In other words, the patent holder should only be
9 compensated for the approximate incremental benefit derived
10 from his invention.

11 This is particularly true for standard essential
12 patents. When a technology is incorporated into a standard,
13 it is typically chosen from among different options. Once
14 incorporated and widely adopted, that technology is not
15 always -- is not always used because it is the best or the
16 only option; it is used because it is necessary to comply
17 with the standard.

18 In other words, widespread adoption of a standard
19 essential technology is not entirely indicative of the added
20 usefulness of an innovation over the prior art.

21 To ensure that a royalty reflects the incremental
22 value of the patented technology, you must consider the
23 following two factors in setting a royalty:

24 Any royalty for the patented technology must be
25 apportioned from the value of the standard as a whole; and

1 The royalty must be based on the value of the invention, not
2 any value added by the standardization of that invention.
3 In determining the royalty amount, you may consider any
4 evidence of royalty stacking.

5 I have a few remaining instructions for you all but
6 I'm going to leave them after closing -- until after the
7 closing because they pertain to your deliberations. So what
8 we're going to do at this time, we're going to take a
9 15-minute break. When you come back, we'll hear the closing
10 argument of the parties. We'll be in recess.

11 COURT SECURITY OFFICER: All rise.

12 (Recess.)

13 (Jury out.)

14 THE COURT: Please be seated.

15 MR. HILL: Your Honor, I had a couple of issues I
16 wanted to raise right quick with the Court before we get
17 started with the final closing here.

18 THE COURT: All right.

19 MR. HILL: Number one is our time division in terms
20 of on the front end. We're going to use 25 minutes on the
21 front end of our presentation and 20 minutes in the rebuttal.

22 I'll be doing the first half; Mr. Caldwell will be
23 doing the second half.

24 And if I could get a warning when I've used
25 20 minutes, I would appreciate it. And then Mr. Caldwell

1 would like a warning 5 minutes before the end of time.

2 THE COURT: That's the same for both of y'all,
3 right? You both want a 5-minute warning? Okay.

4 MR. HILL: That's correct, your Honor. Yeah.
5 Essentially, we both want a 5-minute warning.

6 THE COURT: All right.

7 MR. HILL: The second issue -- or I guess -- let me
8 think what else we had to raise with the Court. There was
9 one other issue, Your Honor, and this a -- this will be an
10 ambush on you. I apologize. I forgot this issue right after
11 I spoke with your law clerk, and it has to do with the
12 sealing of the courtroom for the closing arguments.

13 There are portions of the infringement case and the
14 damages case, which I will have to discuss with the jury,
15 which will involve information covered by the protective
16 order.

17 I'm fine to seal the courtroom before we start. My
18 concern is fits and starts in the middle of a closing
19 argument, trying to seal and unseal the courtroom. And, so,
20 to avoid that, Your Honor, I would propose, I think we're
21 just going to have to seal it from the get-go, at least for
22 our presentation.

23 I maybe can get into it to some extent and then
24 stop and seal it, but it wouldn't be much. And so, again, my
25 fear is the fits and starts that would be involved, so I

1 would ask that we seal it.

2 And the other thing I would ask, though, Your
3 Honor, and I would ask for an order from the Court to this
4 effect, is an order that would exempt Ms. Wagner, our
5 corporate representative, from having to leave the courtroom
6 for the closing arguments.

7 There is nothing that is going to be, frankly,
8 useful to anyone -- though I recognize and respect the terms
9 of the protective order -- that's going to be shown. You
10 know, there's going to be snippets of code that have been
11 addressed with the jury throughout the case, there are going
12 to be things of that matter, nothing that's going to change
13 the world for anybody or in this way advantage her in any
14 kind of sense.

15 And so I would ask that, despite the terms of the
16 protective order, that the Court order that she be allowed to
17 stay present in the courtroom for the closing arguments.

18 THE COURT: Response.

19 MR. LUMISH: Yes, Your Honor. Doug Lumish for
20 Apple.

21 My first concern is that my client should be able
22 to hear as much of the closing arguments as they can. And
23 what we just heard was they should be shut out of all of it.
24 I don't think that's appropriate or fair.

25 I don't want to interrupt Mr. Hill's closing any

1 more than I'd like mine interrupted; but, perhaps, there's
2 another way to handle it.

3 What we did with our slides is obscure the things
4 that we thought were highly confidential and subject to the
5 protective order. We sent them to them last night so they
6 could see that and tell us if they felt otherwise.

7 But if they could take an approach more like that
8 so that my client could stay in the court and watch closing
9 arguments, I think that's more appropriate. Otherwise, I
10 think we ought to have to do it piecemeal, as much as I hate
11 to say it.

12 MR. HILL: Your Honor, I can, I think solve his
13 problem about his client's participation. I've asked that my
14 client, the Court enter an order excusing my client from the
15 protective order for purposes of being present for the
16 closing argument. I would ask that you extend that same
17 courtesy to Apple. That would take care of it.

18 If they want to be present, that's fine. As long
19 as the Court orders it, no third party can complain about it
20 either in a meaningful way. And so we would ask that the
21 Court enter that order that the parties, their
22 representatives be present throughout the closing argument.

23 They can hear whatever's discussed in the closing
24 argument; and that that is an exception to the protective
25 orders entered in the case.

1 MR. LUMISH: That works from Apple's perspective,
2 Your Honor. Of course, there's source code in this case that
3 comes from Qualcomm. We can't speak for them. So -- but as
4 far as Apple's confidential information goes, we're fine with
5 that, as long as our client can stay as much as theirs.

6 MR. HILL: Great news about being the Judge, Your
7 Honor, is you can speak for them. And so we'd ask that you
8 enter an order that takes precedence over the other orders
9 you've entered in this case with regard to the production of
10 information that allows the closing arguments to go on
11 without interruption.

12 THE COURT: What are the parameters that the
13 protective order require people can view it to do, with
14 regard what they know about the confidential information?

15 MR. HILL: Are you speaking in terms of prosecution
16 bars or things of that sort?

17 THE COURT: Yeah. Well, what I'm speaking of is
18 there some additional language I can put in the order that
19 would give Qualcomm some comfort about what maybe one sees
20 today and what they could do down the road with what they
21 see.

22 MR. HILL: Well, the Court, I think, could
23 certainly order that the parties can stay in the courtroom;
24 however, they cannot use or repeat or make any use of any of
25 the information that they may see or hear other than for the

1 purpose of observing these cross -- or these closing
2 arguments.

3 That would at least give them some modicum of
4 protection; that if they believe someone is out there in the
5 world using that information in some way, which again,
6 considering the small pinhole of information they're going to
7 see in this closing, I think it's unlikely. But it would
8 give that party the ability to come back to the Court and ask
9 to enforce the order.

10 MR. LUMISH: That's acceptable to me, Your Honor.

11 THE COURT: All right. All right. Then --

12 MR. HILL: And, Your Honor, I had one other issue,
13 and I, for the life me, can't think of it. I'm hoping that
14 maybe the Court can help me with that if you were told in
15 advance.

16 THE COURT: I was only told about the time
17 warnings.

18 MR. HILL: Time split, warnings, I think that is
19 it, Your Honor. I think we've covered it.

20 THE COURT: Okay. So I'm going to order this so
21 that we don't have to unseal and seal the courtroom: We
22 will -- we will seal it, and I will exempt both clients from
23 that requirement and order those clients not to make any use
24 of, repeat anything that they see, or in any way otherwise
25 use the information beyond viewing it today as part of the

1 closing argument.

2 I don't really like sealing the courtroom during
3 closing arguments, but I'm -- I'm believing the
4 representation that it will be a good chunk of what you're
5 going to deal with in closing.

6 MR. HILL: Well, Your Honor, the problem is, is
7 because of the way the information invades the liability side
8 of the case and then also the damages side of the case. You
9 would have multiple -- you would have two or three fits and
10 starts in between.

11 I recognize what Mr. Lumish suggests about
12 obscuring things from the jury. I won't tell him how to, you
13 know, practice his trial techniques, but I have a strong
14 reservation about suggesting to a jury that I'm holding
15 information from their view during closing argument. So
16 that's why I have a problem with the obscuring suggestion.

17 MR. LUMISH: Well, in fact, Your Honor, if I may,
18 I'm asking to have all of the things that obscure my slides
19 removed now because if the courtroom is going to be clear --
20 going to be sealed, then I'd like to be able to show the jury
21 the evidence directly.

22 MR. HILL: And, Your Honor, if those are slides or
23 materials that have been used previously in the case and the
24 jury has already seen, we have no objection.

25 THE COURT: Okay. All right. Then we're going to

1 seal the courtroom with the exceptions and as ordered by the
2 Court, noting you-all may stay, the clients.

3 Let's seal the courtroom at this time. If you're
4 not covered by the protective order, I'm going to ask you to
5 leave, and then we'll bring in the jury.

6 (Courtroom sealed.)

7 (This portion of the transcript is sealed and filed
8 under separate cover as Sealed Portion No. 19.)

9 (Courtroom unsealed.)

10 THE COURT: All right. Ladies and Gentlemen of the
11 Jury, I've got just a few more instructions regarding
12 deliberations, and then you will recess to the jury room.

13 You must perform your duties as jurors without bias
14 or prejudice as to any party. The law does not permit you to
15 be controlled by sympathy, prejudice, or public opinion. All
16 parties expect that you will carefully and impartially
17 consider all the evidence, follow the law as it is now being
18 given to you, and reach a just verdict, regardless of the
19 consequences.

20 You should consider and decide this case as a
21 dispute between persons of equal standing in the community,
22 of equal worth, and holding the same or similar stations in
23 life. A corporation is entitled to the same fair trial as a
24 private individual. All persons, including corporations, and
25 other organizations stand equal before the law, regardless of

1 size or who owns them, and are to be treated as equals.

2 When you retire to the jury room to deliberate on
3 your verdict, you may take these instructions with you, as
4 well as exhibits which the Court has admitted into evidence.

5 Select your foreperson and conduct your
6 deliberations.

7 If you recess during your deliberations, follow all
8 of the instructions that I have given you about your conduct
9 during the trial.

10 After you have reached your verdict, your
11 foreperson is to fill in your answers to the questions on the
12 verdict form. Do not reveal your answers until such time as
13 you are discharged, unless otherwise directed by me. You
14 must never disclose to anyone, not even to me, your numerical
15 division on any question.

16 Any notes that you have taken during this trial are
17 only aids to your memory. If your memory should differ from
18 your notes, then you should rely on your memory and not on
19 your notes. The notes are not evidence.

20 A juror who has not taken notes should rely on his
21 or her independent recollection of the evidence and should
22 not be unduly influenced by the notes of other jurors. Notes
23 are not entitled to any greater weight than the recollection
24 or impression of each juror about the testimony.

25 If you want to communicate with me at any time,

1 please give a written message or question to the court
2 security officer, who will bring it to me. I will then
3 respond as promptly as possible, either in writing or by
4 having you brought into the courtroom so that I can address
5 you orally.

6 I will always first disclose to the attorneys your
7 question and my response before I answer your question.

8 After you have reached your verdict, you are not
9 required to talk with anyone about the case unless the Court
10 orders otherwise. You may now retire to the jury room to
11 deliberate.

12 COURT SECURITY OFFICER: All rise for the jury.

13 (Jury out.)

14 THE COURT: Please be seated.

15 I wanted to let you know I have some criminal
16 matters that begin at 1:00 o'clock this afternoon, so I'll
17 need to you make room for my criminal attorneys.

18 I also wanted to let you know that it has been a
19 real pleasure to preside over the case. So thank you for the
20 opportunity.

21 We'll be in recess awaiting the jury's verdict.

22 (Recess taken.)

23 (Jury out.)

24 THE COURT: I just wanted to let you-all know we
25 had Juror Note No. 1 for the jury; and it is just a request

1 for Exhibit PX-65, which we have verified that they do, in
2 fact, have there. So we don't need to take any further
3 action, but I wanted to let you know we had an official note,
4 and that was their request.

5 Any questions about that?

6 MR. LUMISH: Not from Apple, your Honor.

7 MR. HILL: No, your Honor.

8 THE COURT: All right. Thank you. We'll be in
9 recess awaiting the jury's verdict.

10 (Recess, 1:44 p.m. to 2:32 p.m.)

11 (Jury out.)

12 THE COURT: We have received Juror Note No. 2,
13 which just says, "Need a dry-erase board!" So I think they
14 would like a dry-erase board, I suspect also and some
15 dry-erase markers to do some work.

16 Does anybody have one handy? The Court can
17 probably locate one. Okay. If so, I will ask y'all to get
18 it to Ms. Hardwick and Ms. Mayes; and they will get it back
19 to the jury.

20 MR. CALDWELL: Is it clean?

21 THE COURT: Yeah. Let's make sure it doesn't have
22 anything on it or behind it.

23 Any questions?

24 MR. LUMISH: No, your Honor.

25 MR. HILL: Thank you, Judge.

1 THE COURT: Thank you. We will be in recess
2 awaiting the jury's verdict.

3 (Recess, 2:35 p.m. to 3:43 p.m.)

4 (Jury out.)

5 THE COURT: The Court has just received Juror Note
6 No. 3, which says: "We have a verdict."

7 So, we're going to bring in the jury in just a
8 minute. I would like to remind everyone in the whole room,
9 not just counsel but everyone, that once the verdict is read,
10 I expect there will be no facial expressions, no reactions
11 from behind the gallery, anywhere. Save that for when we
12 leave the courtroom.

13 I will instruct the jury that they are free to talk
14 to you if you want to, but you should not approach them.

15 But when I go back and talk to them in the room and
16 release them, I'll ask them individually if anyone would like
17 to be contacted or would like to not be contacted. I will
18 let you know what they say. All right?

19 Are there any questions before we bring in the
20 jury?

21 MR. LUMISH: No, your Honor.

22 MR. HILL: No, your Honor.

23 THE COURT: All right. Let's bring in the jury.

24 (Jury in - 3:44 p.m.)

25 THE COURT: Mr. Foreperson, I understand the jury

1 has reached a verdict. Is that correct?

2 THE FOREPERSON: That's correct, your Honor.

3 THE COURT: If you will please hand that to the
4 court security officer for me.

5 All right. Ms. Hardwick, if you will read the
6 verdict for me.

7 COURTROOM DEPUTY: Yes, your Honor.

8 Did CCE prove by a preponderance of the evidence
9 that Apple infringes the following claims of U.S. Patent
10 No. 8,055,820:

11 As to Claim 4, 10, 12, 20, and 24 the answer is
12 "yes" for all.

13 Did Apple prove by clear and convincing evidence
14 that any of the asserted claims of the '820 patent are
15 invalid as obvious? As to Claim 4, 10, 12, 20, and 24, the
16 answer is "no" as to all.

17 Did Apple prove by clear and convincing evidence
18 that the '820 patent is invalid based on improper
19 inventorship? The answer is "no."

20 What sum of money, if any, if paid now in cash, do
21 you find that CCE proved by a preponderance of the evidence
22 would fairly and reasonably compensate CCE for any
23 infringement of the '820 patent by Apple? The answer in
24 dollars and cents is: "\$22,118,216.20."

25 Was this monetary award a running royalty for

1 Apple's infringement through March, 2016, or a lump sum for
2 the life of the patent? The answer checked is "running
3 royalty through March, 2016."

4 Did CCE prove by a preponderance of the evidence
5 that Apple's infringement was willful? The answer is "yes."

6 Signed by the Jury Foreperson.

7 THE COURT: Is there a request to poll the jury?

8 MR. HILL: Not from the Plaintiff, your Honor.

9 MR. LUMISH: No, your Honor.

10 THE COURT: All right. The verdict will be filed
11 by the clerk of the court.

12 Ladies and Gentlemen of the Jury, thank you again
13 for your service. Your work is done. I am about to dismiss
14 you; but before I do, if you will just retire to the jury
15 room for a brief minute, someone will come around and let you
16 go. But I and the parties thank you for your service. You
17 are dismissed.

18 (Jury dismissed from the courtroom - 3:47 p.m.)

19 THE COURT: If you all want to wait until I'm done
20 visiting with the jury and dismiss them to get a list of who
21 would like to be contacted and who would not, feel free to
22 either remain here or close by, and Ms. Mehta will get it to
23 you.

24 All right? Is there anything further?

25 MR. CALDWELL: Not from the Plaintiff.

1 MR. HILL: No, Your Honor.

2 MR. LUMISH: No, Your Honor.

3 THE COURT: All right. Thank you. We'll be
4 dismissed.

5 (Court adjourned.)

6

7 CERTIFICATION

8

9 IT IS HEREBY CERTIFIED that the foregoing is a
10 true and correct transcript from the stenographic notes of
11 the proceedings in the above-entitled matter to the best of
12 our abilities.

13

14

15 /s/_____
CHRISTINA BICKHAM, CRR, RMR
16 Official Court Reporter

September 14, 2016

17

18 /s/_____
SHEA SLOAN, CSR, RPR
19 Official Court Reporter

20

21

22

23

24

25